



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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NEW YORK, N.Y. 10007

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June 3, 2008

BY HAND

Honorable Richard J. Sullivan  
United States District Judge  
Southern District of New York  
500 Pearl St.  
New York, NY 10007

Re: Harris v. City of New York, et al., 07 CV 7894 (RJS)

Dear Judge Sullivan:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and the attorney for defendants City of New York ("City") and Warden Michael Hourihane in the above-referenced matter.<sup>1</sup> I am writing to respectfully request a sixty-day enlargement of time, from June 3, 2008 until August 4, 2008, within which defendants City and Hourihane may answer or otherwise respond to the amended complaint. I am also writing to respectfully request that Your Honor dismiss the claims against the individuals identified in the amended complaint as "C.O. Miller", "C.O. Barnes", "C.O. Gaines", "Administration Segregation Medcayion [sic] Escort (John Doe)", "C.O. Meadows", "C.O. Bonilla", and "C.O. Green". I write directly to the Court because plaintiff is currently incarcerated and proceeding *pro se* in this matter. This is defendants City and Hourihane's first request for an enlargement of time in this action.

The amended complaint alleges, *inter alia*, that plaintiff was subjected to excessive force while incarcerated at the Anna M. Kross Center. We have forwarded the

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<sup>1</sup> Plaintiff purports to name "Warden C-95" as a defendant in this action. On information and belief, Michael Hourihane is the current Warden at the Anna M. Kross Center, also known as "C-95".

necessary releases to plaintiff to access his medical records, properly assess the case and respond to the amended complaint. The enlargement of time will allow us to investigate the matter

In addition to defendants City and Hourihane, the amended complaint purports to name "C.O. Miller", "C.O. Barnes", "C.O. Gaines", "Administration Segregation Medcayion [sic] Escort (John Doe)", "C.O. Meadows", "C.O. Bonilla", and "C.O. Green" as defendants. However, on information and belief these individuals have not been served with a copy of the summons and amended complaint and are therefore not defendants in this action at this time. Defendants City and Hourihane respectfully note that plaintiff appears to be in violation of the Court's Order dated April 15, 2008, which required, after two previous extensions, plaintiff to serve the amended complaint on defendants by May 15, 2008. The Court warned plaintiff that failure abide by its April 15, 2008 order could result in dismissal of the amended complaint. Accordingly, defendants City and Hourihane respectfully request that Your Honor dismiss the claims against "C.O. Miller", "C.O. Barnes", "C.O. Gaines", "Administration Segregation Medcayion [sic] Escort (John Doe)", "C.O. Meadows", "C.O. Bonilla", and "C.O. Green" for plaintiff's failure to serve these individuals by the May 15, 2008 deadline. See Fed. R. Civ. P. 16(f)(1); Fed. R. Civ. P. 37(b)(2)(A)(v); Valentine v. Museum of Modern Art, 29 F.3d 47, 49 (2d Cir. 1994) (upholding the sanction of dismissal against a pro se plaintiff where notice had been given that noncompliance with a court order could result in dismissal).

In view of the foregoing, it is respectfully requested that the Court grant the within request extending defendants City and Hourihane's time to answer or otherwise respond to the complaint until August 4, 2008. Defendants City and Hourihane also request that the claims against all other defendants be dismissed for plaintiff's failure to comply with the Court's Order dated April 15, 2008.

Thank you for your consideration in this regard.

*Defendants request  
for an enlargement of  
time is granted. Defendants  
shall answer or otherwise  
respond to the amended  
complaint by August 4, 2008.  
No further extensions  
will be granted.*

Respectfully submitted,

*Bradford C. Patrick*  
Bradford C. Patrick  
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Special Federal Litigation Division

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*with respect to defendants'  
request to dismiss the  
claims against the seven (?)  
individual defendants listed  
above, defendants shall  
file a pre-motion letter  
explaining the bases for  
this request by August 4,  
2008. Plaintiff shall have 10  
days to respond to that letter.*

SO ORDERED

Dated: *6/4/08* *Richard J. Sullivan*  
RICHARD J. SULLIVAN  
U.S.D.J.